

PART 4
SCHOOL NUTRITION PROGRAM AGREEMENT

A. THE STATE AGENCY AGREES THAT:

1. To the extent of funds available, it will reimburse the School Food Authority (SFA) for the programs operated by it, as designated in Part 1B, in accordance with meals or milk served to children in the indicated program(s) in schools, during the effective period of this agreement;
2. It will assign rates of reimbursement paid to the School Food Authority for lunches, breakfasts, snacks, and/or milk served to children in each school according to United States Department of Agriculture (USDA) guidelines. The SA shall promptly notify the SFA of any change in the minimum meal requirements or the assigned rates of reimbursement.
3. It assumes the responsibility for disseminating the public release for the free and reduced price policy incorporated as Part 4 Policy Statement Attachments of this agreement;
4. For Severe Need School Breakfast Programs (SBP) only: For Severe Need School Breakfast Programs (SBP) only: To qualify, a site (Building) must have served 40% or more free or reduced-price lunches in the second prior year. The agency must elect to participate in the Severe Need Breakfast Program. See Part 2 (C) of the School Nutrition Program application; and
5. For Especially Needy National School Lunch Programs (NSLP) only: To the extent of funds available, two (2) cents additional section 4 reimbursement will be paid to any SFA which served 60% or more of all lunches to children that qualified for free or reduced lunches during the second preceding year.

B. THE SCHOOL FOOD AUTHORITY AGREES THAT:

1. For each school listed in Part 1F it will serve meals and/or milk and it will conduct the indicated program(s) in accordance with State Agency policy and applicable federal policies and regulations 7 CFR parts 210, 245, 215, and 220, and, specifically, will conform to the following requirements in the conduct of each applicable program;
2. A nonprofit food service or milk program will be operated, using program income only for program purposes, and observing limitations on use of program income set forth in 7 CFR 210.9(b)(1), 210.14(a), 7 CFR 220.7(e)(1), and 7 CFR 215.7(d)(1);
3. Competitive foods will not be sold in the dining area during the meal service as specified in 210.11(b) and Appendix B of the NSLP regulations. Such additional rules or regulations as are necessary to control the sale of foods in competition with meals served under the program will be established;
4. Full accountability for Child Nutrition programs will be maintained at levels established by state and federal laws and regulations and, where applicable, the school accounting manual issued and approved by the State Department of Legislative Audit will be followed (210.9, 210.14, and 7 CFR 3015);
5. Arrangements will be made to have an Organization-Wide Audit conducted in accordance with the provisions of the Federal Office of Management and Budget Circular A-128 or A-133 whenever more than \$500,000 is received from all federal sources annually.
6. Upon request, all accounts and records pertaining to its National School Lunch Program, School Breakfast Program, and/or Special Milk Program, will be made available to the State

Agency or its designee(s), to USDA Food and Nutrition Services, and to the Office of Inspector General for audit or review at a reasonable time and place. These records shall be retained for a period of three (3) years after the end of the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the three (3) year period as long as required for the resolution of the issues raised by the audit. Such records include all applications for free and reduced price meals or free milk submitted by families; permanent agreement, application policy statement, and addendum; and audits, as well as those outlined in 4(B)(31),

7. An EXACT daily count taken at point of service of eligible paid, free, and reduced price meals or milk served to children, and number of meals served to adults will be maintained (7 CFR 210.7 and 210.9(b)(9);
8. Reimbursement will be claimed only for complete meals or milk specified in this agreement served to eligible children enrolled at the school in a program accredited or approved by the Department of Education at the rate(s) assigned by the State Agency. Reimbursement will be claimed for only one meal per child per day at each respective meal service. Meals and milk served to adults will be excluded from reimbursement claims (210.9(b)(8) and 220.7(e)(6);
9. Except for RCCIs, reimbursement will be claimed only on days when educational school activities take place as approved by CANS.
10. Claims for reimbursement will be submitted in accordance with procedures established by the State Agency. Claims are due in the State Agency by the 10th of the month following the month being claimed. Claims for reimbursement not filed within sixty (60) days past the month being claimed will be disallowed. Adjustments to claims must be made within 90 days from the end of the month being claimed. Any exception to this requirement will be made at the direction of the State Agency and Food & Nutrition Service Regional Office (7 CFR 210.8);
11. Meals or milk which meet the requirements prescribed in 7 CFR parts 210, 215 and/or 220 will be served during appropriately designated periods;
12. Meals will be priced as a unit, except when no specific charge is made in nonpricing meal programs as described in the application. The school will collect from adults an amount equal to the meal cost (food, labor, and other) plus at least the per meal value of USDA donated commodities and the rate of reimbursement for a paid student meal. If meal cost is not known, the adult meal charge shall be equal to the highest student charge plus the per meal value of USDA donated commodities and the rate of reimbursement for a paid student meal (7 CFR 210.9);
13. Lunches, breakfasts, and snacks, as applicable, will be made available in pricing programs in compliance with 7 CFR 245 without cost or at a reduced price to all children who are determined under the School Food Authority's current approved free and reduced-price policy statement to be unable to pay the full price (7 CFR 210.9). Free milk will be made available in Option 2 Special Milk Program to all needy children whenever it is provided under the Special Milk Program;
- 14a. Maintain files of currently approved and denied applications for free meals or milk and reduced price meals, respectively. The names of children approved for free meals/milk based on documentation certifying that the child is included in a household approved to receive benefits under the Food Stamp Program, Temporary Assistance for Needy Families (TANF), or Food Distribution Program on Indian Reservations (FDPIR) or has been determined to be homeless, runaway, or is a member of a migrant family. Application Documentation shall be completed at household level rather than individual children. They shall be readily retrievable by school;

- b. Retain the applications submitted by families and other documentation of eligibility for free meals or milk and reduced price meals for a period of 3 years after the end of the fiscal year to which they pertain or as otherwise specified under paragraph 6 of this section (210.23(c);
- 15. The net cash resources of its nonprofit school food service will be limited to an amount that does not exceed three (3) months operating costs or such other amounts as may be approved by the State Agency (7 CFR 210.9 and 210.14);
- 16. It will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); all provisions required by implementing regulations of the Department of Agriculture; Department of Justice Enforcement Guidelines, 28 CFR 50.3 and 42; and FNS directives and guidelines, to the effect that, no person shall, on the grounds of race, color, national origin, gender, age or disability, be excluded from participation in, be denied benefits of, or otherwise be subject to discrimination under any program or activity for which the program applicant receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement. It will make no discrimination against any child because of his or her eligibility for free meals or milk or reduced price meals in accordance with the approved Free and Reduced Price Policy Statement.

By accepting this assurance, the program applicant agrees to compile data, maintain records and submit reports, including racial/ethnic information of enrolled students and those eligible for free and reduced price meals, to permit effective enforcement of the nondiscrimination laws and permit authorized USDA personnel during normal working hours to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, Food and Nutrition service, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the program applicant and its successors, transferees, and assignees, as long as they receive assistance or retain possession of any assistance from the Department. The person or persons whose signatures appear on Part 1J are authorized to sign this assurance on behalf of the program applicant.

- 17. Pricing programs only: Maximum use of the reimbursement payment will be made to reduce the price of meals served to paying children, or to reduce the price charged to children in Option 1 of the Special Milk Program;
- 18. It will maintain necessary and proper facilities with sanitation and health standards in conformance with all applicable state and local laws and regulations in the storage, preparation, and service of food and milk;
- 19. Follow procurement procedures in 7 CFR 3015, 220.16, 215.14a, 210.21, and 7CFR3015 to ensure that items are obtained economically and efficiently;
- 20. It will promote and document parent/student/community involvement as required in 210.12;
- 21. It will not withhold meals or milk from children as a disciplinary action;
- 22. It will implement the offer versus serve option appropriate for the chosen menu planning option for lunch at senior high school level; and will have a formal policy regarding offer vs. serve for all other grades for the lunch service (7 CFR 210.10 or 210.10a), and a separate policy for breakfast (7 CFR 220.8(e)(2)(ii) and 220.8(g)(3) as designated in Part 3(H);

23. Each of the schools listed in Part 1 of this Agreement, if private, is nonprofit and exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended (7 CFR 210.2);
24. Each of the schools listed is licensed or accredited as defined in 7 CFR 210.2 "school" definition also found in Part 4 (C)(1)(q) of this agreement;
25. Every school year, each school food authority (SFA) with more than one school serving lunches, shall perform at least one on-site review of each school under its jurisdiction before February 1 of each school year. Schools that serve snack shall be reviewed twice each year. The first review shall be during the first four weeks of operation, regardless of the number of sites the SFA operates. If the program is year round, the first review shall occur within the first four weeks of operation in the initial year of operation and twice each school year thereafter. If this review discloses problems with a school's meal counting or claiming procedure, the SFA shall: (a) ensure that the school develops and implements a corrective action plan; and (b) within forty-five (45) calendar days of the review, conduct a follow-up on-site review to determine that the corrective action resolved the problem. Each on-site review shall ensure that the school's claim is based on the counting system authorized in 1(C) with the State Agency and that this system, as implemented, yields the actual number of reimbursable free, reduced price, and paid meals served for each day of operation;
26. Prior to submission of a monthly Claim for Reimbursement the SFA official approved to sign the claim shall complete edit checks by comparing each school's daily claim against data which will assist in the identification and correction of the claims in excess of the number of reimbursable free, reduced price, and paid lunches actually served that day to children eligible for such lunches as described in 210.8, 210.9(b)(8). It is to be assumed that the attendance factor is the same for children eligible for free and reduced price meals as the general school population;
27. It will submit accurate claims and acknowledges that failure to do so will result in the recovery of an overclaim and may result in the withholding of payments, suspension, or termination of the program. It also acknowledges that if failure to submit accurate claims reflects embezzlement, willful misapplication of funds, theft, or fraudulent activity, that person may be subject to fine or imprisonment (210.9, 210.25, 210.26, 215.6, and 220.6);
28. Any contract for food processing, food preparations, or food management included in Part 1(G) and submitted for the approval of the state. Any contract shall be consistent with all state federal laws and regulations (210.16) and receive approval by the state prior to becoming effective;
29. Donated food will be received according to Part 5 and in accordance with 7 CFR 250;
30. Foods donated by the Department will be accepted and used, in as large quantities as may be efficiently utilized in the nonprofit school food service;
31. Full and accurate records of the food service program(s) will be kept as outlined in 210.8 and 15, 220.9, and 215.8 to serve as a basis for claims for reimbursement and for audit and review purposes. The records to be kept with respect to each program (Severe Need Breakfast income and expenses need to be accounted for separately from lunch, snack, and regular breakfast) include the following:

BREAKFAST AND/OR LUNCH/SNACK RECORDS

- a. Meal Eligibility and Claims
 - i. Daily number of meals served to children, by type of meal (breakfast, lunch, and snack) and eligibility classification (paid, free or reduced price).

- ii. Worksheets and edit checks used to develop the claim for reimbursement.
 - iii. Documentation of on-site review described in 4(B)(25).
 - iv. Any other documentation which is not included directly on the worksheet(s) to demonstrate compliance with 4(B)(26) & (27).
 - v. Racial/ethnic background of all students.
 - vi. Racial/ethnic background of students eligible for meal benefits, as well as for those denied meal benefits.
 - v. Applications for meal benefits.
 - vi. Monthly rosters of those eligible for meal benefits
- b. Program Income (Receipts)
- i. From children's payments.
 - ii. From federal reimbursement.
 - iii. From adult payments.
 - iv. From all other sources, including loans to the program and any other federal reimbursement.
 - v. A la carte and other program sales.
 - vi. For NSLP Provisions 2 and 3 only: From General Funds the cost differential for children not eligible for free meal.
- c. Program Expenditures (Supported by invoices, receipts or other evidence of expenditures).
- i. For food.
 - ii. For labor.
 - iii. All other expenditures, including repayment of loans to the Program.
 - iv. For a la carte and other program sales.
- d. Value of Donations to Program
- i. Donated food, exclusive of food donated by the Department.
 - ii. Donated services.
 - iii. All donations other than food and services.
- e. Production Records:
- i. Planned menu with serving sizes for the day with any substitutions.
 - ii. Kinds and quantities of all foods used for the meal.
 - iii. Number of meals served - enrolled children, other children, program adults, other adults, and total.
 - iv. Date of meal served.
- f. Verification Records:
- i. Total number of applications on file October 1st.
 - ii. Percentage of applications verified.
 - iii. Summary of verification efforts, Report 742 SD, submitted to the State Agency no later than March 1st.

SPECIAL MILK RECORDS

- a. Daily record of milk purchases;
- b. Daily record of milk served free to qualified students;
- c. Daily record of milk served to adults;
- d. Daily record of milk sold to paying students.

32. Provide to the state for the month of October, the total number of children approved for reduced price meals and meal supplements, and the total number of children enrolled in the school food

authority as of the last day of operation in October. This information shall be provided either through the Claim for Reimbursement for single attendance center SFAs or through the October Site Survey for multiple attendance center SFAs. The school food authority shall submit this data to the State agency with the October claim for reimbursement, no later than December 30 of each year. The State agency may require school food authorities to provide this data for a more current month if for use in the State agency claims review process. (210.8(c)(2))

This information shall be used to determine a list of all elementary schools under its jurisdiction in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day the preceding October. The State agency may designate a month other than October for the collection of this information, in which case the list must be provided to the State agency within 60 calendar days following the end of the month designated by the State agency. In addition, each school food authority shall provide, when available for the schools under its jurisdiction, and upon the request of a sponsoring organization of day care homes of the Child and Adult Care Food Program, information on the boundaries of the attendance areas for the elementary schools identified as having 50 percent or more of enrolled children certified eligible for free or reduced price meals.

33. Afterschool care requirements. Those school food authorities with eligible schools (as defined in Sec. 210.10(n)(1) or Sec. 210.10a(j)(1), whichever is applicable) that elect to serve meal supplements during afterschool care programs, shall agree to: (1) Serve meal supplements which meet the minimum requirements prescribed in Sec. 210.10 or Sec. 210.10a, whichever is applicable;[[Page 21]] (2) Price the meal supplement as a unit; (3) Serve meal supplements free or at a reduced price to all children who are determined by the school food authority to be eligible for free or reduced price school meals under 7 CFR part 245; (4) If charging for meals, the charge for a reduced price meal supplement shall not exceed 15 cents; (5) Claim reimbursement at the assigned rates only for meal supplements served in accordance with the agreement; (6) Claim reimbursement for no more than one meal supplement per child per day; (7) Review each afterschool care program two times a year; the first review shall be made during the first four weeks that the school is in operation each school year, except that an afterschool care program operating year round shall be reviewed during the first four weeks of its initial year of operation, once more during its first year of operation, and twice each school year thereafter; and (8) Comply with all requirements of this part, required by Sec. 210.9(b)(9)). (210.9(c) and the State Agency.
34. Access to all areas related to food preparation and service sites shall be given to personnel responsible for conducting two food safety inspections per year. Follow-up inspections and/or local requirements may increase that number.
35. Results of inspections shall be posted in a publicly visible location at the site. A copy of the report shall be provided to a member of the public upon request.
36. If a local agency operates more than one Child Nutrition Program (such as lunch, breakfast, summer), no more than two yearly inspections are required.

C. THE STATE AGENCY AND THE SCHOOL FOOD AUTHORITY MUTUALLY AGREE THAT:

1. For the purpose of this Agreement, the following terms, in accordance with 210,2, 215,2, 220,2, and 245.2 will mean:

- a. **Adult:** A person who is (1) a staff member or employee of a school, including all faculty, supervisory, and other personnel, (2) a person not under 21 chronological years of age in schools as defined in Part 210.2, and (3) not a student of high school grade or under as determined by the State Educational Agency in schools as defined in Part 210.2.
- b. **Authorized Representative:** The person designated by the governing board of the School Food Authority to assume responsibility for the Child Nutrition Programs.
- c. **Categorical Eligibility:** Any child who is a member of a food stamp household, TANF assistance unit, or FDPIR household is automatically eligible for free meals or free milk. Such households must provide current food stamp, TANF, or FDPIR case numbers and adult signature on the application for free and reduced price meals or free milk to establish their categorical eligibility, unless the school food authority has implemented direct certification.
- d. **Cost of obtaining food:** The cost of obtaining agricultural and other food for consumption by children. Such costs may include, in addition to the purchasing price of agricultural commodities and other food, the cost of processing, distributing, transporting, storing, or handling any food purchased for, or donated to, a federally funded child nutrition program.
- e. **Direct Certification:** The process of establishing children's categorical eligibility for benefits by obtaining documentation from the State Social Services Office or commodity Distribution Office provided to families each August or as they become eligible after that time. This certifies that the children are from households currently receiving food stamps, TANF, or FDPIR benefits. Households determined eligible for meal or milk benefits through direct certification are not required to submit a free and reduced price application to the school.
- f. **Fiscal year:** A period of twelve (12) calendar months beginning with October 1 of any calendar year and ending with September 30 of the following calendar year.
- g. **Foster Child:** A child who is living with a family but who remains the legal responsibility of the welfare agency or court;
- h. **Meals:** Food served at a school under the indicated program(s) that meets the applicable meal pattern requirements set forth in regulations. "Meals" thus means Breakfast, Snack, or Lunch whichever is applicable.
- i. **Milk:** Pasteurized fluid types of milk. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration consistent with State and local standards for such milk.
- j. **Multiple School Food Authority:** An eligible SFA which contracts to operate two or more eligible SFAs under one Child Nutrition Program agreement with the State Agency and assumes full regulatory liability and financial responsibility in the operation of the Program in all schools and SFAs under its agreement.
- k. **NSLP Special Provisions:**

Provision 1 - In schools where at least 80% of the children enrolled are eligible for free or reduced price meals, annual certification of children eligible for free meals may be reduced to a minimum of once every two consecutive school years.

Provision 2: A school food authority may certify children for free and reduced price meals for up to 4 consecutive school years in the school which serve meals at no charge to all enrolled children; provided that public notification and eligibility determinations are in

accordance with 245.5 and 245.3, and 245.9(b) respectively, during the base year as defined. The Provision 2 base year is the first year, and is included in the 4-year cycle. After that time, the socio-economic status is reviewed every 4 years to determine if approval to participate in Provision 2 should be granted. Additional requirements shall be outlined and defined in an additional agreement for Provision 2. Payment from other than federal sources must be made for meals served to children not eligible for free or reduced price meals and the differential between meal cost and the federal reimbursement;

Provision 3 – A school food authority of a school which serves all enrolled children in that school reimbursable meals at no charge during any period for up to 4 consecutive school years may elect to receive Federal cash reimbursement and commodity assistance at the same level as the total Federal cash and commodity assistance received by the school during the last year that eligibility determinations for free and reduced price meals were made and meals were counted by type (free, reduced price, and paid) at the point of service, or as otherwise authorized under part 210. Such cash reimbursement and commodity assistance will be adjusted for each of the 4 consecutive school years. The base year must begin at the start of a school year. The Provision 3 base year immediately precedes, and is not included in, the 4-year cycle. Additional requirements shall be outlined and defined in an additional agreement for Provision 3. Payment from other than federal sources must be made for meals served to children not eligible for free or reduced price meals and the differential between meal cost and the federal reimbursement;

- I. Net Cash Resources: All monies, as determined in accordance with the state's established accounting system, that are available to or have accrued to a School Food Authority's nonprofit school food service at any given time, less cash payable. Such monies may include but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit, and the value of stocks, bonds, or other negotiable securities.
- m. Nonprofit food service: Food service maintained by the School Food Authority for the benefit of the children, all of the income from which is solely for the operation or improvement of such food service.
- n. Nonprofit private school: A nonpublic school that is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended.
- o. Offer vs. Serve: A method of meal service designed to reduce food waste and give students a choice in the items they take. This is available for both breakfast and lunch. All required items in a meal pattern must be offered; the items the student takes (is served) may be less if designated by the school policy. Offer vs. serve is not an option for the snack.
- p. Point of Service: That point in the food service operation where a determination can accurately be made that a reimbursable free, reduced price, or paid meal has been served to an eligible child. Meal count is completed after a student has passed by all food items, received a meal, and the meal is observed for correct food items to determine eligibility for claiming.
- q. School: (1) An educational unit of high school grade or under operating under public or nonprofit private ownership in a single building or complex of buildings. (2) any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; (3) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and if private, is licensed to provide residential child care services under the appropriate licensing code by the state, or a subordinate level of government except for residential summer camps which participate in the Summer Food Service Program for Children, Job Corps

Centers funded by the Department of Labor and private foster homes. The term "residential child care institutions" includes, but is not limited to: homes for the mentally, emotionally, or physically impaired; unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children, long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or district part thereof, which is intended for the care of children confined for 30 days or more. (7 CFR 210.2.) SFAs that qualify under (q)(3) are referred to as Residential Child Care Institutions (RCCIs).

- r. School Food Authority: The governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a meal or milk program therein. (7 CFR 210.2)
- s. School Year: A period of twelve calendar months beginning with July 1 of any calendar year and ending with June 30 of the following calendar year.
- t. Special Milk Program-Pricing Options:
Option 1: Serve milk to all children at the same price. All children are charged for milk; no benefits for those that qualify for free milk.
Option 2: Serve milk free to children eligible to receive free milk.
- u. Split session kindergarten or pre-school: A kindergarten or pre-school class in session for partial days.
- v. State Agency: Child and Adult Nutrition Services, a unit of the Office of Education Services and Support in the South Dakota Department of Education.

2. Requirements for Meal Patterns are in accordance with Federal regulations 210.10, 210.10a, and 220.8:

- a. Lunches, snacks, and breakfasts shall offer required items to meet the chosen menu planning option in Part 2(F) and meal pattern requirements as set forth in the Child Nutrition Act federal regulations;
- b. If emergency conditions prevent a school normally having a supply of milk from temporarily obtaining delivery thereof, the State Agency may approve the service of meals without milk during the emergency period.
- c. Schools shall make substitutions in the planned menu for students with a disability that are under the protection of 7 CFR Part 15B and show that disability restricts their diet. Schools shall also make substitutions for other students who are unable to consume the regular meal because of medical or other special dietary needs. Substitutions shall be made on a case by case basis only when supported by a statement of need. Substitutions include recommended alternate foods, unless otherwise exempted by FNS. Such statement shall be signed by a medical doctor or, in the case of a nonhandicapped student, by a recognized medical authority.
- d. USDA may approve variations in the food components of a school lunch meal pattern on an experimental or on a continuing basis in any school where there is evidence that such variations are necessary to meet ethnic, religious, economic, or physical needs. The USDA may also approve variations on the basis of new laws as established by Congress.

3. This agreement shall become effective on the day it is executed and shall extend to the following September 30, unless suspended or terminated according to termination procedures

outlined below. Payments will be made according to 7CFR210.7 and 210.8, 220.9 - 11, and 215.8 - 10 or as soon as practicable after Congress has appropriated funds.

4. This agreement may be extended from October 1 to September 30 of following years by annual amendment according to 7CFR210.9(b), 220.7, and 215.7. Extension will be dependent upon execution of the amendment by November 30 of the amendment year. Execution will be dependent upon timely return of complete information and compliance with the terms of the current agreement.
5. This agreement may be terminated upon ten (10) days written notice on the part of either party hereto, and the State Agency may terminate this Agreement immediately upon receipt of evidence that the terms and conditions of this Agreement or the regulations have not been fully complied with by the School Food Authority. Any termination of this Agreement by the State Agency shall be in accordance with applicable laws and regulations.
6. Certain decisions which deny a SFAs application for participation or which assess an overclaim, may be appealed to the Secretary of Education , who shall name the hearing official.

The terms of this Agreement shall not be modified or changed in any way other than by consent in writing of both parties hereto.

PART 5

FOOD DISTRIBUTION PROGRAM

SECTION I DONATED FOODS AGREEMENT

This section applies only to those SFAs participating in NSLP and/or SBP. Schools do not receive commodities for the School Breakfast program or the snack option in NSLP; however, commodities may be used in these programs.

A. The State Agency agrees that:

1. To the extent of food available it will provide USDA donated foods to the School Food Authority designated in Part 1 for the National School Lunch Program, and, if applicable, the School Breakfast Program to assist with the effective delivery of the program(s).
2. The amount of donated food will be governed by federal entitlement for each program and available bonus commodities in useable quantities.

B. The School Food Authority agrees that:

1. It will accept and use in quantities as large as can be efficiently utilized in its lunch program such foods that may be offered as a donation by the USDA;
2. It will maintain a true and accurate perpetual inventory record of receipts and withdrawals for all food items in a single inventory system (with the exception of SFAs which employ a food service management company) or by utilizing an inventory system which separates USDA Donated Food from purchased food. An annual physical inventory of food items shall be completed and reconciled with the perpetual inventory.

A School Food Authority which employs a food service management company shall require a true and accurate perpetual inventory record of receipts and withdrawals, showing a current balance of each USDA Donated Food (commodity). At any time during the year, any Agency having a known USDA Donated Food (commodity inventory) with a date of pack that exceeds two years shall report such items, in writing, to the State Agency.

All School Food Authorities will also furnish a complete on-hand inventory upon request of the State Agency or its designees, SD Department of Legislative auditor or its designees, or representatives of USDA.

3. Proper storage facilities for all USDA foods requested and accepted by the School Food Authority will be furnished. The State Agency and USDA are authorized to inspect USDA foods in storage at any reasonable time. The School Food Authority further agrees to keep its storage facilities clean, dry, orderly, temperature controlled, ventilated, locked, and use all items on the basis of first in - first out. If recommended storage for perishables is not available within the School Food Authority's own buildings, it will be permissible to remove the USDA donated foods from its premises for the purpose of providing proper storage in local commercial locker plants or with merchants who have such plants. It is necessary to maintain a current record of receipts, withdrawals and balances. **DO NOT STORE USDA DONATED FOODS WITHIN PRIVATE HOMES;**
4. Transfer of known commodity items from a School Food Authority to an "unlike recipient agency" (such as a food bank) must be requested through the State Agency and must have approval of the Food and Nutrition Service Regional Office.

5. USDA donated foods received according to this Agreement will be used solely for the benefit of those eligible persons served by the School Food Authority and will not be otherwise disposed of or used for demonstration or tests, other than family and consumer science classes, without written approval of the State Agency. UNDER NO CIRCUMSTANCES will USDA donated foods be sold, exchanged or used off the premises of the School Food Authority.
6. Commodities will not be processed into different end-products without prior approval of the State Agency. If commodities are processed into different end-products, it is mandatory that a contract be entered into between the processor and the School Food Authority.
7. It will arrange to have an Organization-Wide Audit conducted in accordance with the provisions of the Federal Office of Management and Budget Circular A-128 or A-133 if more than \$500,000 is received from all Federal sources.
8. Distribution and use of donated foods are in accordance with Part 250 of the Regulations.
9. It has and preserves a right to assert claims against other persons to whom donated foods are delivered for care, handling or distribution.
10. It will take action to obtain restitution in connection with claims for improper distribution, use or loss of, or damage to, donated foods.
11. Agreement may be terminated for cause by either party upon 30 days notice.

SECTION 2 FRESH FRUIT AND VEGETABLE PROJECT

AGREEMENT WITH RECIPIENT AGENCY

Using the Department of Defense, Defense Personnel Support Center (DPSC) to purchase and deliver the best quality of fresh fruits and vegetables to shipping points designated by the State Distributing agency (DA) or individual schools within the State, the Child and Adult Nutrition Services and the local agency agree to a project as follows in this Agreement.

PART A: DEFINITIONS

1. Agricultural Marketing Services (AMS) - The agency within the Department of Agriculture (USDA) responsible for procuring fresh fruits and vegetables for the National School Lunch Program.
2. Defense Subsistence Office (DSO) - The office within the Department of Defense Personnel Support Center responsible for purchasing fresh fruits and vegetables and other products for the Department of Defense's military bases and commissaries.
3. Department of Defense Personnel Support Center (DPSC) - An agency within the Department of Defense.
4. Distributing Agency (DA) - The State Agency, which enters into agreements with USDA and Recipient Agencies for the domestic distribution of donated foods to eligible recipient agencies under this project.

5. Fiscal Year (FY) - The period beginning October 1 of each year and ending September 30 the following year.
6. Food and Nutrition Service (FNS) - The agency within USDA responsible for administering the National School Lunch Program, including the food distribution component of that program.
7. National School Lunch Program (NSLP) - The program authorized by the National School Lunch Act (42 U.S.C. 1751-1769(e)).
8. Recipient Agency (RA) - A school food authority participating in the NSLP which receives donated food for its own use, has been designated by the DA as eligible to place orders for fresh product under the project, and has an agreement with the DA for the project.
9. School Year (SY) - The period beginning July 1 of each year and ending June 30 of the following year.
10. Terminal Market - A local wholesale market where a variety of fresh products can be purchased daily.
11. Volume purchases or buys - Truckload quantities shipped directly from the growing field area.

PART B: DA PARTICIPATION IN THE PROJECT

1. The DA shall designate a portion of its current year commodity entitlement under Section 6 (e) of the National School Lunch Act (42 U.S.C. 1755(e)) to be used to procure fresh product under the project. The DA shall inform FNS of the exact amount it has designated for such use under the project.
2. The regional office shall enter a delivery order number for the amount designated by the DA for the project into the Processed Commodity Inventory Management System (PCIMS). Such amount shall be counted against the DA's available commodity entitlement under section 6(e) of the National School Lunch Act (42 U.S.C. 1755 (e)).
3. The DA shall order fresh produce in accordance with this agreement in the amount that it designates for the project. The DA agrees to monitor product orders of its RAs to ensure that the full designated amount is used but not exceeded.
4. The DA shall comply with all applicable provisions of the Federal-State agreements with the DA (Form FNS-74) covering commodity donations to the DA for the NSLP for SY 1996, including the requirement that commodity use comply with 7 C.F.R. Part 250.

PART C: ORDERING SYSTEM

1. The DA shall provide the DSO with a list of RAs designated by the DA with the authority to order fresh product;
2. The DA shall enter into agreements with participating RAs that require the following:
 - a. The RA shall place orders for fresh product directly with DSO either by telephone or facsimile;

- b. When ordering fresh product, the RA shall include the five digit item code, quantity, requisition number and requested delivery date (consistent with established lead times);
 - c. When ordering fresh product, the RA shall identify any unique ordering requirements (e.g., count, size or grade) for DSO to ensure that accurate quality and quantity of fresh product are purchased; and
 - d. Notwithstanding normal ordering schedules and lead times, the RA may contact the DSO to order from available DSO stocks on hand of fresh product in cases of an emergency.
2. As set forth in Parts VII and VIII of the agreement between DPSC, FCS and AMS (Attachment A), DPSC will ensure that DSO completes all requirements related to the ordering and purchasing of the fresh product to RAs on behalf of DPSC.

PART D: SHIPMENT AND DELIVERY

1. As set forth in Part IX of the agreement between DPSC, FCS and AMS (Attachment A), DPSC will ensure that DSO completes all requirements related to the shipment and delivery of the fresh product to the RAs on behalf of DPSC.
2. Prior to the initial shipment of fresh product under this project, the DA shall provide DSO with names, addresses, phone numbers, and normal delivery hours of all delivery points for each RA.
3. The DA shall enter into agreements with participating RAs that require the following:
- a. When the fresh product is shipped to an RA (rather than picked up by the RA at a DSO warehouse), the RA shall be responsible for offloading the fresh product from the tailgate in an expeditious manner; if the RA is delinquent in offloading and detention charges accrue, the RA will be responsible for the detention and other charges caused by the delay.
 - b. Unless otherwise directed by DSO, the RA shall exchange any pallets received from prior shipments or from pallets on hand.
 - c. The RA shall notify DSO if the shipment has not arrived within one hour of the scheduled delivery time and take any corrective action requested by DSO;
 - d. Prior to accepting any shipment, the RA shall count and verify the shipment and annotate any overages or shortages on the vendor's ticket or government bill of lading;
 - e. Prior to accepting any shipment, the RA shall inspect the fresh product and call the DSO if there is any nonconformance, such as product quality or product damaged during shipment, to determine disposition of the product. DSO shall evaluate any nonconforming fresh product, utilizing field buyers, DSO Produce Specialists or FCS or AMS representatives, and advise the RA as to whether to accept or reject the product and what actions to take if the fresh product that has been accepted is later determined to be nonconforming;
 - f. Acceptance of a shipment shall be made by signing the delivery ticket or government bill of lading;
 - g. The RA shall notify the DSO within 24 hours of delivery of any quantity discrepancies discovered prior to acceptance or any rejected product;

- h. The RA shall transmit the vendor's delivery ticket to DSO by mail or facsimile on a weekly basis; and
 - i. Within 24 hours of delivery, the RA shall notify DSO of any quality or condition defect of the fresh product discovered after acceptance of the fresh product.
 - j. The RA shall complete evaluation forms that solicit information on the quality, condition, timeliness, delivery and cost of the fresh produce and the quality of DSO service. The DA shall provide this information to FCS to use to evaluate the project.
- 4. Title to the fresh product shall pass to the RA upon the acceptance of the fresh product at the time and place of delivery.
- 5. This project is limited to the purchase of fresh product for use in the NSLP and this agreement shall terminate upon the close out and resolution of any outstanding claims or other issues arising from the purchase, delivery and use of such commodities.

PART 6
POLICY STATEMENT FOR FREE AND REDUCED-PRICE MEALS AND/OR FREE MILK

- A. The School Food Authority, having requested participation in the National School Lunch Program for lunches and or snacks, the Regular or Severe Need School Breakfast Program and/or the Special Milk Program accepts responsibility for providing free and reduced price lunches breakfasts, and/or snacks, and free milk as applied for and approved, to eligible children for each school day during the school year in the school(s) under its jurisdiction.
- B. The School Food Authority assures Child and Adult Nutrition Services that it will uniformly and fully implement the following policy in accordance with 7 CFR Part 245 to determine children's eligibility for free and reduced price meals or free milk in the School Breakfast Program, Special Milk Program, and/or National School Lunch Program under its jurisdiction. In fulfilling its responsibilities, the School Food Authority agrees that it will:
- 1a. As a pricing meal program,
- Serve meals free to children from families whose income meets free income eligibility guidelines listed in Attachment A. In addition, the SFA will provide these benefits to children from families who are experiencing unemployment which causes the family income to fall within the criteria set forth.
- Serve meals at a reduced price to children from families whose income meets the reduced price income eligibility guidelines in Attachment A. An SFA must charge \$.40 or less for reduced price lunches, \$.30 or less for reduced price breakfasts, and/or \$.15 for snacks. [Part 245(2)(g) and 210.9(c)(4)]
- 1b. As a nonpricing meal program, serve meals without charge to all children and claim reimbursement according to approved applications for free and reduced price meals on file.
- 1c. As a nonpricing Special Milk Program, serve all milk without charge and claim at the standard rate or cost, whichever is less.
- 1d. As a pricing Special Milk Program, implement a policy to a) determine children's eligibility for free milk based on the free income eligibility guidelines listed on Attachment A, or b) charge the same rate to all children regardless of ability to pay.
2. Not physically segregate, nor allow any other discrimination against any child because of his/her eligibility category. The names of the children eligible to receive free or reduced price meals or free milk shall not be published, posted, or announced in any manner and there shall be no overt identification of any such children by use of special tokens or tickets or any other means. Further assurance is given that children eligible for free or reduced price meals or free milk shall not be required to:
- a. Work for their meals and/or milk.
- b. Use a separate area.
- c. Go through a separate serving line.
- d. Enter the serving area through a separate entrance.
- e. Be served meals/milk at a different time.
- f. Receive a meal/milk different from the one sold to children paying the full price.
- g. Receive tickets or tokens from a place that is separate from where the paying child receives his or her ticket or token.

3. Designate the person listed in Part 2(G)(2) to review applications and direct certification letters and make determination of eligibility. This official will use the criteria outlined in this policy and in USDA's August 1991, Eligibility Guidance for School Meals Manual to determine eligibility.
4. Obtain documentation for free or reduced price meals or free milk on a SMP pricing option 2 program as indicated in Part 2(B). Each child's parent or guardian will be provided with a letter as outlined herein, including an application form for free or reduced price meals, or free milk in a Special Milk pricing option 2 program (See Attachments B1, B2, and B3) at the beginning of each school year.

Parents will be requested to return a direct certification letter or complete the application and return it to the determining official named in Part 2(G)(2) for review. Such applications and documentation of action taken must be maintained for three (3) years after the end of the school year to which they pertain, unless they are involved in an audit at which time they shall be maintained until the audit is closed.

A letter of direct certification from Department of Social Services will be accepted in lieu of a completed application for free or reduced price meals. An Interagency Notice of Action from an Indian Tribal Organization operating FDPIR shall also be accepted as direct certification. Direct certification letters and Interagency Notices verify that listed children are eligible for free meals.

Applications may be filed at any time during the year. Any parent/guardian enrolling a child in a school for the first time at any time during the year, shall be supplied with an application for free and reduced price meals. If a child transfers from one school to another under the jurisdiction of the same School Food Authority, the child's eligibility for a free or reduced price meal or free milk will be transferred to and honored by the receiving school.

All children from a family will receive the same benefits unless documentation proves otherwise. Parents or guardians will promptly be notified individually of the acceptance or denial of their eligibility. (Child and Adult Nutrition Services recommends notification within 10 working days.) Children will be served meals/milk at the approved rate immediately upon the establishment of their eligibility.

When an application is denied, parents/guardians will be informed of the reason for denial and the hearing procedures in writing by the designated hearing official named in Part 2(G)(2)

This hearing official must be someone not involved in the original eligibility determination. It is suggested that the hearing official hold a position independent of, or superior to, that of the determining official.

NOTE: A child residing in an RCCI is classified as a family of one with the money available to the child considered as the child's total income. A roster listing the child's name, social security number if available, and income, along with the dates of admission and departure, is sufficient to demonstrate eligibility. Those 21 and over are not eligible to receive a reimbursable meal in an RCCI. Boarding Schools and Adjustment Training Centers are not considered to be an RCCI.

5. Establish a procedure to collect money from children who pay for their meals or milk and to account for the number of free, reduced price, and full price meals or free and full price milk served. The procedures described in 1(C) and 2(H) will be used so that no other child in the

school will consciously be made aware by such procedure of the identity of the children receiving free or reduced price meals or free milk.

6. Use the Application for Free and Reduced Price Meals or Free Milk (Attachments B1, B2, and B3) as prescribed by the State Agency. Child and Adult Nutrition Services must approve any alterations of applications, public announcements, etc., prior to implementation. Such changes will be effective only upon approval. All changes in eligibility criteria must be publicly announced in the same manner used at the beginning of the school year.
7. If using applications from the prior year during the certification period, use applications for free and reduced price meals from the prior year no later than 30 operating days into the new school year.
8. Verify applications for free and reduced price meals by November 15 and document results in accordance with 7 CFR 245, Eligibility Guidance for School Meals Manual, and SD Child Nutrition Program Guidance. RCCIs using rosters and Provision 2 and 3 schools outside of the base year are exempt from verification requirements.
9. Pricing Programs Only: Establish and use a fair hearing procedure for parents' appeals of the SFA determining official's decision on applications and for school officials' challenges to the correctness of information contained in an application or to the continued eligibility of any child for free or reduced price meals or free milk. During the appeal and hearing, the child will continue to receive free or reduced price meals or free milk. A record of all such appeals and challenges and their dispositions shall be retained for three (3) years.

Prior to initiating the hearing procedure, the parent/guardian or SFA official may request a conference to provide an opportunity for the parent/guardian and SFA official to discuss the situation, present information, and obtain an explanation of data submitted in the application and decisions rendered. Such a conference shall not in any way prejudice or diminish the right to a fair hearing.

The hearing procedure shall provide the following:

- a. A publicly-announced, simple method for making an oral or written request for a hearing.
- b. An opportunity to be assisted or represented by an attorney or other person.
- c. An opportunity to examine, prior to and during the hearing, the documents and records presented to support the decision under appeal.
- d. Reasonable promptness and convenience in scheduling a hearing and adequate notice as to the time and place of the hearing.
- e. An opportunity to present oral or documentary evidence and arguments supporting a position without undue interference.
- f. An opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses.
- g. That the hearing be conducted and the decision made by a hearing official who did not participate in the decision under appeal or any previously held conference.

- h. That the decision of the hearing official be based on oral and documentary evidence presented at the hearing and made a part of the hearing record.
- i. That the parties concerned and any designated representative thereof be notified in writing of the decision of the hearing official.
- j. That for each hearing a written record be prepared, including the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official and the reasons therefore, and a copy of the notification to the parties concerned of the hearing official's decision.
- k. That such written record be preserved for a period of three (3) years and shall be available for examination by the parties concerned or their representatives at any reasonable time and place during such period.

Actions that adversely affect a family's eligibility shall be made 10 operating days from the date of family notification. Actions that increase a family's benefits shall be within 3 operating days.